



# House of Representatives

General Assembly

**File No. 433**

February Session, 2018

Substitute House Bill No. 5271

*House of Representatives, April 12, 2018*

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT REDEFINING "PUBLIC AGENCY" FOR PURPOSES OF THE FREEDOM OF INFORMATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of section 1-200 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2018*):

4 (1) "Public agency" or "agency" means:

5 (A) Any executive, administrative or legislative office of the state or  
6 any political subdivision of the state and any state or town agency, any  
7 department, institution, bureau, board, commission, authority or  
8 official of the state or of any city, town, borough, municipal  
9 corporation, school district, regional district or other district or other  
10 political subdivision of the state, including any committee of, or  
11 created by, any such office, subdivision, agency, department,  
12 institution, bureau, board, commission, authority or official, and also

13 includes any judicial office, official, or body or committee thereof but  
14 only with respect to its or their administrative functions, and for  
15 purposes of this subparagraph, "judicial office" includes, but is not  
16 limited to, the Division of Public Defender Services;

17 (B) Any person to the extent such person is deemed to be the  
18 functional equivalent of a public agency pursuant to law; [or]

19 (C) Any "implementing agency", as defined in section 32-222; or

20 (D) Any organization established by a commission, task force,  
21 working group or any other body created in statute by the General  
22 Assembly, including any nonprofit organization that is tax exempt  
23 under Section 501(c)(3) of the Internal Revenue Code of 1986, or any  
24 subsequent corresponding internal revenue code of the United States,  
25 as amended from time to time, except in the case of any organization  
26 established by a judicial body or judicial office, as described in this  
27 subdivision, only with respect to its administrative functions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	1-200(1)

**Statement of Legislative Commissioners:**

In Section 1(1)(D), "provided" was changed to "except" for accuracy.

**GAE**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill, which redefines “public agency” under the Freedom of Information Act, has no fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sHB 5271*****AN ACT REDEFINING "PUBLIC AGENCY" FOR PURPOSES OF THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

This bill expands the definition of “public agency” under the Freedom of Information Act (FOIA) to include an organization established by a commission, task force, working group, or any other body created in statute by the General Assembly, including a 501(c)(3) tax-exempt nonprofit organization (hereafter “covered organization”). In the case of an organization established by a judicial office or body, the bill applies only to its administrative functions (see BACKGROUND).

By including covered organizations in the definition, the bill subjects them to FOIA’s requirements for public agencies. Generally, this means that they must make their records and meetings open to the public, unless an exemption applies (e.g., certain records containing trade secrets).

Current law generally defines “public agency” as any (1) state or local governmental agency, department, institution, bureau, board, or commission, including any executive, administrative, or legislative office, and the administrative functions of any judicial office, including the Division of Public Defender Services or (2) entity that is the functional equivalent of any such agency (CGS § 1-200(1)) (see BACKGROUND).

EFFECTIVE DATE: October 1, 2018

**BACKGROUND*****Administrative Functions***

The Connecticut Supreme Court has ruled that, for purposes of FOIA, records related to the Judicial Branch's adjudicatory functions are categorically exempt from disclosure and that a judicial office's administrative functions consist of activities relating to its budget, personnel, facilities, and physical operations (*Clerk of the Superior Court, Geographical Area Number Seven et al. v. Freedom of Information Commission*, 278 Conn. 28 (2006)).

### **Functional Equivalent**

In determining whether an entity is the “functional equivalent” of a public agency for purposes of FOIA, the Connecticut Supreme Court ruled that the following four factors must be considered:

1. whether the entity performs a government function,
2. the level of government funding,
3. the extent of government involvement or regulation, and
4. whether the entity was created by the government.

Further, the court held that “[a]ll relevant factors are to be considered cumulatively, with no single factor being essential or conclusive” (see *Board of Trustees of Woodstock Academy v. Freedom of Information Commission*, 181 Conn. 544 (1980) and *Connecticut Humane Society v. Freedom of Information Commission*, 281 Conn. 757 (1991)).

### **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 10      Nay 7      (03/23/2018)